

1 let's go off the record.

2 JUDGE SIPPEL: We're on the record. Let me just  
3 tell you very briefly that I'm going to I -- I initially  
4 ruled that the Ginsburg letter of August of '95 was not  
5 relevant to the time period that we're concerned with here.  
6 And so I had excluded it as evidence in this case.

7 It's been marked for identification, but it's not  
8 received in evidence and I have reaffirmed that ruling in  
9 your absence that it's -- at this point in the hearing  
10 anyway, it's irrelevant because of the time frame. So I'm  
11 going to permit Mr. Beckner then to continue the questioning  
12 on something else.

13 BY MR. BECKNER:

14 Q Really just a few more questions, Mr. Price.  
15 First I'd like to ask you -- whether or not you recall  
16 having a discussion about or receiving a memo -- I'm sorry  
17 sending a memo to your lawyers among others about an STA  
18 request for 60 Sutton Place South? And this would have been  
19 dated April 10, 1995.

20 A I don't recall. It may have. I think this came  
21 up in the earlier testimony. But right now I can't recall  
22 that memo.

23 Q Then you don't recall what the occasion was which  
24 lead you to examine the memo to the lawyers about --- your  
25 request for 60 Sutton Place South?

1           A     I can only hazard a guess. But I believe we --  
2     there was testimony on this earlier in the proceeding. At  
3     least I recall it. And the reasons for why there may have  
4     been communication there. If not, all I can do is hazard a  
5     guess. But I -- I can not say positively what that  
6     communication would be about. I'd just be guessing.

7           Q     I think it was established that 60 Sutton Place  
8     South was a building that was being served by a hardwire  
9     inner connection.

10          A     That's correct.

11          Q     Okay. And the only other question I want to ask  
12     you about this is whether or not this being asked about this  
13     April 10th memorandum refreshes your recollection at all  
14     about when you realized that Time Warner's petitions to deny  
15     were going to delay the processing of Liberty's microwave  
16     applications?

17          A     No it does not.

18          Q     Okay. Now I want to ask you just a couple of  
19     questions about documents. With respect to -- to documents  
20     things that you wrote at Liberty's business. Did you retain  
21     copies of those things in a file in your office?

22          A     You're talking about everything that I wrote? Or  
23     everything that --

24          Q     Well first I asked about documents that you wrote.

25          A     Documents that I was the author they were either

1 kept in a file or in the disk that my secretary might be  
2 using. I believe most of my correspondence if not all of it  
3 was captured that way. Not necessarily in hard copy but on  
4 her PC.

5 Q And the physical location of the paper file if  
6 there was one, was that in your office or somewhere else?

7 A It was in her office.

8 Q I see. Now I'm going to ask you about documents  
9 that you received. Correspondence that you received that  
10 was addressed to you from your lawyers. Did you keep copies  
11 of that correspondence?

12 A I generally -- as a general rule I did not.

13 Q Okay when you received that correspondence what do  
14 you do with it as a general rule?

15 A I would generally forward it to the party that was  
16 most involved in -- in resolving that transaction. Very  
17 often things were pointed to my office or to me as a  
18 reference point to point the document to the right person to  
19 take care of it and I would keep it or deal with it if it  
20 was specifically requesting me to take action.

21 Q Well with respect to documents that did  
22 specifically request you to do something, did you keep  
23 copies of those in your office?

24 A I did not keep copies of those in my office, no.

25 Q What did you do the correspondence of that nature

1 that came in to you after you had done whatever you were  
2 asked to do?

3 A I would generally forward it to someone else with  
4 a note or my secretary would file it if she felt that it was  
5 a an active issue that was going to continue my involvement  
6 in my dealing with it and then she would create a file for  
7 that and would keep that file for generally the period that  
8 the issue was active maybe she also kept files beyond that  
9 point. I'm not sure.

10 Q So you're -- you're -- your secretary was in  
11 charge of setting up and maintaining your files to the  
12 extent that you had the result?

13 A That's correct.

14 Q Now you said that you would forward these  
15 documents to other people. Do you mean other people within  
16 the company or --

17 A Generally, other people in the company or counsel  
18 who might also be involved in the same subject.

19 Q All right. Now I think you testified about  
20 specifically about these licensing accords that were  
21 addressed to you and Mr. Nourain, and I think you said that  
22 even though it was addressed to Mr. Nourain you would have  
23 forwarded that to him as well. Is that correct?

24 A That's correct. If it wasn't requesting me to  
25 take action, I would have forwarded it to the most likely

1 person who would be involved in the transaction.

2 Q Were there circumstances under which you would  
3 forward documents to Howard Milstein?

4 A Very frequently, yes.

5 Q And with respect to Edward Milstein would you do  
6 that also?

7 A Yes.

8 Q Do you know whether or not either of them kept  
9 those documents in the files?

10 A I have no idea.

11 Q Now in conjunction with responding to the document  
12 request in this case, did you have anything to do with the  
13 searching for documents in your personal office or your  
14 secretary's office?

15 A Well I was asked to have my secretary search her  
16 files. I help in part of that. She did a much more  
17 extensive job without my supervision or in addition to it.  
18 And I also searched my office very thoroughly.

19 Q Do you know whether or not Mr. Howard Milstein's  
20 office or wherever he keeps his files was searched?

21 A I was not asked to search his office. And I have  
22 no idea.

23 Q The same question with respect to Edward Milstein.

24 A Same answer.

25 Q All right. I don't think I have anything more of

1 this witness right now Your Honor. The only thing I'd like  
2 to ask is at the lunch break I'll look at the time records.  
3 And when I have an opportunity to ask him additional  
4 questions based on them. I've tried to go through them but  
5 as you know it's --

6 MR. SPITZER: We have no objection.

7 JUDGE SIPPEL: All right.

8 MR. BECKNER: All right thank you.

9 JUDGE SIPPEL: Mr. Holt.

10 MR. HOLT: Thank you Your Honor I just have a  
11 few --

12 BY MR. HOLT:

13 Q Mr. Price are you familiar with the location of  
14 the property known by the address 2727 Palisades?

15 A I -- No I'm not familiar with that site. I've  
16 never been there.

17 Q But you're aware from the fact that it's a  
18 Cablevision service test site?

19 A I am not specifically aware of that. If you say  
20 it is, I I'll take that on faith.

21 Q The secured designation order, -- I -- secured  
22 designation order which is in the record as Time Warner  
23 Cablevision's authority to refer to indicates that service  
24 at 2727 Palisades commenced on April 24th 1995. Does that  
25 sound correct to you?

1           A     I don't know the answer to that question. It  
2 doesn't sound correct or incorrect. I just don't have any  
3 idea without looking at our reports and records. I'm not  
4 disputing it. I just can't answer the question.

5           MR. SPITZER: We had stipulated that these dates  
6 are --

7           JUDGE SIPPEL: Substantially --

8           MR. SPITZER: Substantially correct.

9           MR. HOLT: All right I'm just simply trying to lay  
10 a foundation for my next line of questioning.

11          BY MR. HOLT:

12          Q     Mr. Price to your knowledge at any time after  
13 Liberty commenced service at 2727 Palisades on April 24,  
14 1995 do you know whether Liberty ceased operating or ceased  
15 providing service to -- to that location?

16          A     Offhand, I don't know. I -- I -- not that I'm  
17 aware of if we did.

18          Q     Ordinarily would you be made aware if Liberty were  
19 to cease providing service to a building that it has  
20 formerly been providing service to?

21          A     If it were some permanent cessation of service of  
22 cancellation of a contract or some breach of an agreement.  
23 If it were a -- an outage in the system or some technical  
24 correction that was being made or some glitch that didn't  
25 affect or contractual relationship with the building,

1 probably not.

2 Q You made a good point. And I didn't mean to ask  
3 an overly broad question. So let me focus it a little bit  
4 more. To your knowledge at any time after Liberty commenced  
5 service to 2727 Palisades on April 24, 1995 do you know  
6 whether -- whether you suspended service to that building as  
7 a result of discovering that it had been providing service  
8 without FCC authorization?

9 A No I'm not aware of the fact we did.

10 Q And I take it that you would have been made aware  
11 had Liberty ceased service or suspended service to that  
12 location as a result of discovering that it was operating  
13 without FCC authorization?

14 A I would normally be, yes.

15 Q Is it -- would I be correct to assume that Liberty  
16 bills its subscribers for providing service to 2727  
17 Palisades?

18 MR. SPITZER: Your Honor objection. You're going  
19 to have to put a time frame on this.

20 JUDGE SIPPEL: Sustained. Go ahead.

21 BY MR. HOLT:

22 Q Thank you. During the period after April 24,  
23 1995, which is on or about that day, is it fair to assume  
24 that Liberty billed its subscribers for service that it  
25 provided to 2727 Palisades?



1           A     I can't answer that question because as you know  
2     from the record there are buildings where we did suspend  
3     billings. Whether this is one of them, I can not say  
4     without looking at the records.

5           Q     Okay so you have records in your files that would  
6     allow you to answer that question?

7           A     I believe that there are documents of -- that have  
8     been submitted in evidence which indicate that we had  
9     offered to suspend billing and I believe that -- that  
10    certify that we did.

11          Q     Okay. I guess that's what I'm getting to. I'm  
12    going to know whether or not you suspended billing to  
13    subscribers for 2727 Palisades?

14          A     As I said, it may have been one of those  
15    buildings, but I'd have to refresh my recollection by seeing  
16    the document.

17          Q     Well I would ask you then if I may take leave of  
18    the Judge, to possibly during a break, inquire as to whether  
19    service was suspended to 272 -- I mean billing was  
20    suspended.

21                JUDGE SIPPEL: Billing was suspended?

22                MR. HOLT: We could stipulate on the record  
23    whether or not.

24                JUDGE SIPPEL: All right hold on just a minute.

25                MR. SPITZER: Your Honor first I would object just

1 with respect to materiality and relevance. But even aside  
2 from that, I think the record has been -- I think there has  
3 been documents provided which indicate where -- and with  
4 respect to which buildings we did cease billing. And I  
5 think it's unfair to ask this witness without the benefit of  
6 those documents whether this was one of them.

7 MR. HOLT: And Your Honor I don't want to trick or  
8 confuse the witness in any way. And I would simply ask, as  
9 counsel had pointed out. A representation was made to the  
10 Commission. That Liberty would take certain action with  
11 respect to this building. And I'm trying to determine  
12 whether or not that action was taken.

13 MR. SPITZER: Your Honor the documents -- again I  
14 don't think it's relevant to the subject matter before Your  
15 Honor. But the documents were provided to counsel which  
16 established that fact. The correspondence to the  
17 subscribers of the billings and a multitude of other  
18 documents as well surrounding that decision. So I -- I'm  
19 not sure where -- what Mr. Holt is seeking.

20 MR. HOLT: Well Your Honor I don't -- I have not  
21 seen documents. And I'll go back and look again. I have  
22 not seen documents related to 2727 Palisades which is my  
23 client's service territory. And what I'm seeking to know it  
24 could be a very simple inquiry is if the witness could check  
25 during a break as to whether or not billing was suspended to

1 that location?

2 JUDGE SIPPEL: Well -- I -- the witness is not  
3 here to -- to testify to that specifically unless he's  
4 confronted with something that's inconsistent with what's  
5 been represented to the Commission. I think that -- I'm  
6 sure that Mr. Begleiter or Mr. Spitzer, Mr. Chin, somebody  
7 can look that information up for you and let you know after  
8 lunch.

9 MR. BEGLEITER: I will say this Your Honor. The  
10 issue about whether Liberty's -- was developed in the  
11 depositions of a number of people including Bertina  
12 Ceccarelli and Jennifer Walden and Edward Foy. We gave  
13 documents. Mr. -- I do not believe Mr. Holt attended those  
14 depositions. And if there's any issue with regard to that  
15 we will gladly provide the information if it was not in the  
16 17,000 documents that we've already produced. But we --  
17 since the beginning of this HDO we've had a letter here  
18 dated June 16th that Mr. Price says he's not charging. I'll  
19 read it for Your Honor.

20 MR. BECKNER: Objection.

21 MR. BEGLEITER: It's from -- well it's been  
22 rejected -- it's a rejected exhibit Your Honor, but  
23 nonetheless.

24 JUDGE SIPPEL: Well this is a proffer.

25 MR. BEGLEITER: This has been assertion of

1 Liberty's since before this -- way before this HDO began.

2 Why are we hearing about this problem on the sixth day of  
3 this hearing?

4 JUDGE SIPPEL: I'm not satisfied with the  
5 relevance of this either. I just thought that maybe this  
6 might be an easy factual issue to clear up. It's not --  
7 we're not going to do it this way.

8 MR. HOLT: I think it would be a very factual  
9 issue to clear up Your Honor. As you indicated, counsel  
10 could simply check and we could stipulate whether they did  
11 or didn't.

12 JUDGE SIPPEL: Well maybe --

13 MR. HOLT: It goes to -- it goes to Liberty's

14 JUDGE SIPPEL: Yeah go ahead.

15 MR. HOLT: It goes to a number of issues. One is  
16 the truthfulness and accuracy of representations made to the  
17 Commission with respect to this property.

18 JUDGE SIPPEL: I understand that but I don't want  
19 to start down an audit.

20 MR. HOLT: Right, but --

21 JUDGE SIPPEL: Of every piece of property to  
22 verify whether or not the representation was accurate.  
23 That's because you know some things been shown to push us in  
24 that direction.

25 MR. HOLT: Your Honor --

1 MR. BEGLEITER: Aside from the depositions of all  
2 of these people that I mentioned before in which these  
3 questions in which these questions were asked in which the  
4 letters went to the subscribers were introduced into -- were  
5 identified at the depositions. People were asked directly  
6 when the -- when the billing stopped. Mr. Price was deposed  
7 for it for four days. He wasn't asked.

8 MR. HOLT: Your Honor --

9 MR. BEGLEITER: Why are we hearing this -- why are  
10 we hearing this now? This is not a surprise issue. This is  
11 an issue that's been lingering -- that's been present up  
12 front unambiguously since before this HDO began.

13 MR. HOLT: Your Honor --

14 JUDGE SIPPEL: Well, just a minute. Just a  
15 minute. Now first of all, in fairness to this witness who  
16 has been on this stand since 9:30 -- close to 9:30 this  
17 morning, he's answered the question. He said he doesn't  
18 know without the document. We don't have the document to  
19 put in front of him right now.

20 MR. HOLT: Right.

21 JUDGE SIPPEL: There's some question -- there's a  
22 lot of colloquy going on between counselors to -- who should  
23 know this and who should have done it when. We're going to  
24 have to clear this up. Try and clear this up off the  
25 record. We can come back and talk about it later. Unless

1 any, Mr. Weber do you have anything that you want to add to  
2 this?

3 MR. WEBER: No. Your Honor.

4 JUDGE SIPPEL: All right. I mean it's -- we're  
5 just wasting time. Right now we're wasting time. So you  
6 have your answer. You may proceed now to the next question.  
7 Witness can't answer your question.

8 (Continued on next page.)

9 //  
10 //  
11 //  
12 //  
13 //  
14 //  
15 //  
16 //  
17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //

1 BY MR. HOLT:

2 Q Mr. Price, during earlier testimony on previous  
3 days, Mr. Beckner asked you what was the, when was the first  
4 time that the issue of possible unauthorized operations came  
5 on your radar? And you responded by saying the first time  
6 you were aware of a problem was in late April. And I wanted  
7 to ask you again the question that Mr. Beckner originally  
8 asked. When was the first time that the issue generally of  
9 unauthorized operations first came into your consciousness?

10 MR. SPITZER: Your Honor, Mr. Holt's own question  
11 almost demands that I object as asked and answered.

12 JUDGE SIPPEL: Yes, it's been asked and answered.  
13 If you have a -- I'm going to permit you to cross examine in  
14 this area. If you have something -- I don't mean to say  
15 that you have to have new evidence, but you have to have  
16 specific questions.

17 MR. HOLT: Your Honor --

18 JUDGE SIPPEL: He's testified as to when he knew,  
19 when he first knew.

20 MR. HOLT: Your Honor, the witness in responding  
21 to Mr. Beckner's question answered a different -- provided  
22 an answer that didn't respond to the question. And I'm  
23 following up on that to get a more specific response. The  
24 witness, the answer that the witness provided was not to the  
25 question that Mr. Beckner asked. And the question that he

1 asked was a good one and I'd like to put it to the witness  
2 again. Not when did he first become aware that they had a  
3 problem, but when did the issue of premature operations  
4 arise in any way?

5 JUDGE SIPPEL: Well, again, I want, I want that  
6 question in a very specific way. If you have something that  
7 you can confront him with, did Mr. Nourain report this to  
8 you at such and such a time? Did you learn this from  
9 something, some source that you can identify at such and  
10 such a time? But the broad question again as to when it  
11 first came on his radar screen or he first became generally  
12 aware, we've been down there. And I don't want to take this  
13 witness back down that way again. But, yes. If you want to  
14 ask specific questions, go right ahead.

15 BY MR. HOLT:

16 Q Mr. Price, to your knowledge, during the period  
17 July, 1994 through July, 1995, to your knowledge, have you  
18 or Liberty received any information from an individual  
19 employed by or affiliated with Time Warner concerning Time  
20 Warner's investigation of the issue of possible premature  
21 activation?

22 MR. SPITZER: The question went through July '95?

23 MR. HOLT: Through July '95, the year period  
24 that --

25 JUDGE SIPPEL: Yes, he gave him the year time



1 period.

2 MR. SPITZER: All right.

3 JUDGE SIPPEL: Continue, Mr. Price.

4 THE WITNESS: Other than the petition to deny  
5 which Time Warner filed I believe in May 5th, 1995, I never  
6 received any information from Time Warner or their employees  
7 to that effect. Nor do I believe the company did.

8 BY MR. HOLT:

9 Q I'd like to refer you to a -- Time Warner  
10 Cablevision Exhibit 26. Do you have that before you there?

11 A Yes.

12 Q And if you'll look at the second entry  
13 under -- let me back up. Can you describe for me what this  
14 is?

15 A I don't recognize it whatever it is.

16 Q Is this not a list of materials that are provided  
17 to you in your absence?

18 A It could be. It's not the format I would use  
19 anymore. It could have been a year ago.

20 Q If you look at the second entry employee,  
21 Cablevision Article B circulated at Time Warner.

22 A Yes.

23 Q Take a moment to look at that. Do you have any  
24 understanding as to why Mr. Foy might have been reporting  
25 that a Cablevision article was being circulated at Time

1 Warner?

2 A No, I have no idea. I mean, he put past me  
3 articles all the time from community newspapers and things.  
4 He worked at Time Warner and had a lot of friends there. I  
5 know he was, he would get clips from them. He would send  
6 them clips of ours. So it wouldn't surprise me if he sent  
7 me a clip that Time Warner had sent him.

8 Q So Mr. Foy maintains contact with people that he  
9 is friendly with that are employed by Time Warner?

10 A I believe he did then. He'd been there for years  
11 and years and didn't sever his personal friendships with  
12 people he'd worked with for decades.

13 Q Did Mr. Foy ever report to you from time to time  
14 about information he's learned from his friends at Time  
15 Warner concerning Time Warner's operations?

16 A Oh, not that I recall he gets specifically from  
17 friends at Time Warner. Other people in the industry or  
18 colleagues at Time Warner who have since left that he had  
19 lunch with and was discussing our battle with Time Warner.  
20 But not specifically inside information that someone slipped  
21 him who was an employee that was tipping him to something  
22 that was going on internally, no.

23 Q So at no time prior to -- is it your testimony  
24 that at no time prior to April, the end of April, 1995, you  
25 received any information from Mr. Foy or anyone else that

1 suggested Time Warner was investigating the issue of  
2 Liberty's operation of microwave paths without  
3 authorization?

4 A Absolutely not. I never received any such  
5 information.

6 Q Do you know whether anyone else at Liberty Cable  
7 received that sort of information?

8 A If they did, I didn't hear about it. It sounds  
9 like the kind of thing I would hear about if they did  
10 receive it. But I certainly didn't hear about it.

11 Q Without getting into the substance of -- well,  
12 there came a time, did there not, when you really prepared  
13 what's come to be known as an internal audit of the  
14 microwave paths at issue, correct?

15 A I believe that's correct.

16 Q Without getting into the substance of the internal  
17 audit, can you tell me whether or not more than 19 paths are  
18 identified in that audit as having been activated without  
19 authorization?

20 MR. SPITZER: Objection.

21 JUDGE SIPPEL: Sustained.

22 MR. HOLT: Well --

23 JUDGE SIPPEL: This is off limits.

24 MR. HOLT: I'm not seeking to ask privileged  
25 questions regarding privilege, Your Honor.

1 JUDGE SIPPEL: You're asking about substantive  
2 information that's in the report and I'm not going to permit  
3 that, those questions to be asked. I mean, I've already  
4 made my ruling on it.

5 MR. SPITZER: Yes, Your Honor. I understand. I  
6 would state that it was my hope and expectation that  
7 questions generally that didn't get into privileged matters  
8 could be asked about the internal audit.

9 JUDGE SIPPEL: Well, you can ask anything that's  
10 not privileged. Any question at all that's not privileged,  
11 you can ask. But you're trying to tie the question in with  
12 the audit under which there is a contest -- contesting of  
13 privilege. And then you're asking me to rule as to whether  
14 or not it's privileged. I'm not going to do that.

15 MR. HOLT: Okay.

16 JUDGE SIPPEL: I don't want to know what you're  
17 asking is in the report.

18 MR. HOLT: Okay.

19 JUDGE SIPPEL: Or out of the report.

20 MR. HOLT: I'll rephrase it, well --

21 JUDGE SIPPEL: I don't want to hear about the  
22 report.

23 MR. HOLT: May I rephrase the question?

24 JUDGE SIPPEL: Yes.

25 //

1 BY MR. HOLT:

2 Q Mr. Price, at any time has Liberty identified more  
3 than 19 paths to which it provided, which commenced  
4 operating without FCC authorization?

5 MR. SPITZER: Again, I'm going to object on the  
6 grounds of relevance, Your Honor.

7 JUDGE SIPPEL: Well, what's -- where are you going  
8 with this?

9 MR. HOLT: What I'm interesting in knowing is  
10 whether or not the 19th paths identified in the HDO are the  
11 only paths that Liberty has identified as having commenced  
12 service without authorization.

13 JUDGE SIPPEL: Do you have reason to believe there  
14 are more paths other than what's been disclosed in the HDO?

15 MR. HOLT: Your Honor, I may if I can provide you  
16 with that explanation outside the presence of the witness.  
17 I can do that.

18 JUDGE SIPPEL: Well, I'm going to have to excuse  
19 the witness then. I'm sorry, again, Mr. Price. Off the  
20 record.

21 (Whereupon, a brief recess was taken.)

22 JUDGE SIPPEL: Back on the record.

23 MR. HOLT: Thank you, Your Honor. When  
24 Cablevision filed its petition to deny Liberty, it raised  
25 questions about whether service was being provided to a

1 number of different paths, 2727 Palisades was among them.  
2 And in opposing the petition that we filed, Liberty didn't  
3 deny that service was being provided to those -- to certain  
4 receiver sites in Cablevision's service territory. And the  
5 absence of that denial made me curious as to whether or not  
6 Liberty had knowledge of operating paths that were not  
7 disclosed to Cablevision. 2727 Palisades is an interesting  
8 animal because it doesn't fit any of the explanations that  
9 Liberty's been offering up. It wasn't the subject of a  
10 petition denied by Time Warner early on. It wasn't a  
11 problem with an emissions designator. There are a number of  
12 reasons why this path is a little different than the Time  
13 Warner paths.

14 So what I'm seeking to get at is whether Liberty has  
15 fully disclosed to the parties in this case the extent of  
16 its unauthorized operations. And I'm particularly  
17 interested in knowing whether they operated, commenced  
18 operating -- to pass within Cablevision's service territory  
19 that are not listed in the HDO.

20 MR. SPITZER: Your Honor, I begin by agreeing with  
21 only one thing that Mr. Holt said which is the 2727 is a  
22 peculiar animal and we have this on the record in an earlier  
23 deposition. It was our view there were no subscribers at  
24 2727. So it was in its own regulatory --

25 MR. HOLT: I think you're misspeaking.

1           MR. SPITZER: I'm sorry. Wrong site, Your Honor.  
2 But to Mr. Holt's larger point, I don't think he has  
3 anything which provides a foundation for this question and  
4 it's not relevant. This is simply beyond the scope of the  
5 hearing that we're here to elicit evidence with respect to.

6           MR. HOLT: Well, Your Honor, it seems to me it  
7 would be a very simple answer. The witness can say yes or  
8 no. If the witness says no, it ends the line of inquiry.  
9 If they haven't identified any paths other than the 19 in  
10 the HDO. If they have, then I think we --

11          JUDGE SIPPEL: It sounds like you're just, you  
12 know, as though you're speculating with the witness  
13 about -- because, I mean, this is something that's gone into  
14 in no small detail before the hearing designation order it  
15 was issued. And what your question suggests is that you  
16 might have information which indicates there are additional  
17 unauthorized activations which are not included in the  
18 hearing designation order.

19          MR. HOLT: Well, Your Honor, I'm asking the  
20 witness as a factual matter. Because there was no denial  
21 offered up to the questions that were raised in our  
22 petition. I'm asking the witness as a factual matter  
23 whether or not he is aware of commencing operations without  
24 authorization, whether they've identified those paths. And  
25 if so, I want to narrow it to whether or not -- I want to

1 point out the specific addresses and ask him questions.

2 JUDGE SIPPEL: Specific addresses which are --

3 MR. HOLT: Which are within Cablevision's service  
4 territory and with the subject of issues or questions that  
5 were raised in our petition which Liberty never provided a  
6 response.

7 JUDGE SIPPEL: But these are not, these are not  
8 addresses which obviously these are not included on  
9 Appendix A.

10 MR. HOLT: Not the -- the received sites are not  
11 included in the HDO. Only one of the received sites is,  
12 2727 Palisades. And the -- I'm not certain to what extent  
13 the internal audit was used to create the HDO or whether  
14 the -- so I can't ask questions about the internal audit  
15 anyway under your ruling. So I'm getting away from that and  
16 I'm asking --

17 JUDGE SIPPEL: Well, again, it sounds like what  
18 you're doing is on a fishing expedition here. Do you have  
19 any light to shed on this at all, Mr. Weber?

20 MR. WEBER: Well, I may just inquire of Mr. Holt  
21 of whether those other paths listed in Cablevision's  
22 petition if they were already licensed paths. I can state  
23 that the HDO was written only to relate to pending  
24 applications. And that's why it's a hearing designation  
25 order as opposed to an order to show cause or anything. I



1 mean, it's only dealing with pending applications. I  
2 believe it covered all the pending applications that were  
3 covered in petitions to deny.

4 MR. HOLT: The paths were, if my recollection  
5 serves me correctly, were added as amendments to an  
6 underlying application, as the 2727 Palisades path was.  
7 Those amendments were filed in sequence after 2727 Palisades  
8 was filed. I believe an STA was granted for all of the  
9 pending paths in September. But there was a period of time  
10 between July and September when some of these paths have  
11 been applied for that I'm curious to know whether they  
12 commenced operating without operation. And I'm wondering  
13 whether they slipped through the HDO. There is a list of  
14 the paths that are contained in one of the exhibits that was  
15 introduced our last time here.

16 JUDGE SIPPEL: Well, if you have a, I mean, if you  
17 really have, I mean, some good hard evidence and a good  
18 plausible theory for adding issues on kind of a thing,  
19 that's one thing. And I'm not inviting that you go out and  
20 file a petition at issue. But that really is what the  
21 subject matter of that should be, not this witness who has  
22 been told I hope to prepare to testify as to what's  
23 incorporated in the hearing designation order. I mean, it's  
24 just not fair and it's not notice to this witness about --

25 MR. HOLT: Your Honor --